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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,535	08/13/2001	Bahram Mozayeny	14020	7470

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EXAMINER

HEWITT II, CALVIN L

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,535

Applicant(s)

MOZAYENY ET AL.

Examiner

Calvin L. Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2001.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-20-03 6-27-03
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

Status of Claims

1. Claims 1-32 have been examined.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 17 recite "automatically scheduling the appointment *if* the request is for an available time..." (emphasis added)). According to the MPEP (2100-8 first column) claim language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. Therefore, neither claim 1 nor its dependent claims are further limited by features that are described using optional language (i.e. "if"). For example, claims 6, 9, 10 and 15 "do not happen" because each is based on an appointment ("the appointment") being made. Claim 17 is directed to an apparatus. However, it has been held that a

claim directed to a structure is indefinite if it is described in terms of things which may be done (i.e. "if") (*In re Collier*, 158 USPQ 266 (CCPA 1968)). It has also been held that a feature that is not positively recited cannot be relied upon to distinguish a claimed structure from the teachings of the prior art (*In re Collier*, 158 USPQ 266 (CCPA 1968)) therefore Applicant's conditionally recited limitations do not further limit claim 17. Claims 3 and 19 recite similar language.

Claims 2-6 and 18-32 are also rejected as they depend from either claim 1 or 17.

Claims 13 and 29 are directed to a "school" requesting an appointment. However, to one of ordinary skill a school is a physical structure and not capable of thought therefore it is not clear how a school makes a request of a teacher for an appointment (*In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Levine, U.S. Patent No. 5,093,813.

As per claims 1-32, Levine teach a scheduling system comprising: receiving an appointment availability from a second party, receiving an appointment request from a first party and comparing the request to the availability information (abstract). Levine also prompts a user for another request if the requested time is unavailable (column 3, lines 49-54) and requests contact information from the first party (column 3, lines 38-43).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
- Paul teaches a system for scheduling car service and airline registration
7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (571) 272-6712.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

c/o Technology Center 3600

Washington, D.C. 20231


or faxed to:

(571) 273-8300 (for formal communications intended for entry and after-final communications),

or:

(571) 273-6709 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")


Calvin Loyd Hewitt II
Primary Examiner
March 2, 2006